

1964

*Present : Sri Skanda Rajah, J., and Alles, J.*

M. DON ANTHONY, Petitioner, and S. S. J. GOONESEKERA  
and two others, Respondents

*S. C. 222 of 1962—Application for a Writ of Certiorari*

*Certiorari—Bribery Tribunal—Unconstitutional appointment of members—Invalidity of entire proceedings before such tribunal—Effect of the invalidity—Ceylon (Constitution) Order in Council, s. 55.*

The petitioner had been convicted by a Bribery Tribunal and sentenced to pay a fine. He appealed and, on 5th April 1962, the Supreme Court, purporting to follow *Senadhira v. The Bribery Commissioner* (63 N. L. R. 313), set aside only the sentence of fine imposed on him.

*Held*, that the petitioner was entitled, by way of *Certiorari*, to have the entire proceedings, including the conviction, quashed on the ground that the Bribery Tribunal, inasmuch as it consisted of members who had not been appointed by the Judicial Service Commission in terms of section 55 of the Ceylon (Constitution) Order in Council, had no jurisdiction to hear and determine the case against the petitioner.

**A**PPPLICATION for a writ of *Certiorari*.

*M. Tiruchelvam, Q.C.*, with *S. C. Crossette-Thambiah* and *K. Thevarajah*, for the petitioner.

*R. S. Wanasundere*, Crown Counsel, as *amicus curiae*.

*Cur. adv. vult.*

October 2, 1964. SRI SKANDA RAJAH, J.—

This application for a writ of *Certiorari* came to be made under the following circumstances :—

The petitioner Don Anthony was prosecuted by the Bribery Commissioner before a Bribery Tribunal consisting of the first three respondents, who were not appointed by the Judicial Service Commission. The Bribery Tribunal recorded evidence on several dates, convicted the petitioner of the two charges of bribery in respect of which he stood his trial and sentenced him to pay a fine of Rs. 1,000. He appealed and, on 5.4.1962, this Court purporting to follow *Senadhira v. The Bribery Commissioner*<sup>1</sup>, set aside the sentence of fine imposed on him: *Don Anthony v. The Bribery Commissioner*<sup>2</sup>. Thereupon, on 17.5.1962, the petitioner filed this application alleging that the Bribery Tribunal :—

“(i) had no jurisdiction whatsoever to hear the case against the petitioner to make an order on the charges framed against him and to impose a sentence on the petitioner ;

“(ii) that the proceedings before the said Tribunal are *coram non judice* ;

<sup>1</sup> (1961) 63 N. L. R. 313.

<sup>2</sup> (1962) 64 N. L. R. 93.

“(iii) that their findings are null and void and of no effect in law,” and praying that the findings and order of the said Bribery Tribunal be quashed.

It is pertinent to examine the following decisions :

- (1) *Senadhira v. The Bribery Commissioner* (supra) ;
- (2) *Don Anthony v. The Bribery Commissioner* (supra) ;
- (3) *Piyadasa v. The Bribery Commissioner*<sup>1</sup> ;
- (4) *Ranasinghe v. The Bribery Commissioner*<sup>2</sup> ; and
- (5) *The Bribery Commissioner v. Ranasinghe*<sup>3</sup>.

In both *Senadhira* (supra) and *Don Anthony* (supra) Crown Counsel took the same preliminary objection, which appears in the following passage in the judgment of Sansoni, J., at 314 of 63 N. L. R. :—

“When the hearing of the appeal began, Mr. Pullenayegum raised a preliminary objection to the appeal being heard, apparently because he was under the impression that the appellants were challenging the validity of the entire Bribery Act. Basing his argument on the case of *The King Emperor v. Benoari Lal Sarma*<sup>4</sup> he submitted that where an Act is attacked as invalid, the right of appeal conferred by the Act cannot be exercised, and some remedy other than appeal should be sought. Mr. H. V. Perera, in reply to this objection, said that he was not challenging the validity of the whole Act, nor was he even going to argue that a Bribery Tribunal is an unconstitutional body. His objection to the convictions, he said, was that they were bad in so far as the Bribery Tribunal purported to exercise the power of convicting, fining and imprisoning persons charged before it. He claimed that section 69A of the Act gave him a right of appeal which he was entitled to exercise by asking that the sentence of imprisonment and fine be set aside. With regard to the finding of guilt made against his client, he did not attack that finding as unconstitutional, but he submitted that the finding could not stand in view of the objection of misjoinder taken by him.”

It will be noticed that “in the *Senadhira* case, Counsel for the appellant contented himself in limiting his submission to the power of the Bribery Tribunal to pass sentence as being *ultra vires*. He indicated that he was not going to argue that the Bribery Tribunal was an unconstitutional body,” at 394 of 64 N. L. R. 385 (supra).

In *Senadhira* (supra) this Court made order “quashing the convictions and sentences”. In *Don Anthony* (supra), though this Court said, “. . . we would on this appeal apply the decision of this Court in *Senadhira's* case”, it made order only “setting aside the sentence of fine of Rs. 1,000 imposed on him”. It did not quash the conviction as was done in *Senadhira*.

<sup>1</sup> (1962) 64 N. L. R. 335.

<sup>2</sup> (1964) 66 N. L. R. 73 ; 66 C. L. W. 1.

<sup>3</sup> (1962) 64 N. L. R. 449.

<sup>4</sup> (1945) A. C. 14.

In *Piyadasa* (supra) this Court indicated that the preliminary objection raised in the above cases was untenable.

It is relevant to observe that, in view of the preliminary objection, this Court did not find itself called upon to declare the law in deciding *Senadhira* and *Don Anthony* (supra). It was only when dealing with *Piyadasa* (supra) that it felt called upon to do so and it declared that "all proceedings before it (i.e., Bribery Tribunal) consisting of members not appointed by the Judicial Service Commission as required by section 55 of the Ceylon (Constitution) Order-in-Council, 1946, are null and void," at 395 of 64 N. L. R. (supra).

It is correct to say that the state of the law from the moment that section 55 of the Ceylon (Constitution) Order-in-Council came into operation is that in order to vest judicial power in any tribunal the members of such tribunal had to be appointed by the Judicial Service Commission. The failure to so declare when *Senadhira* and *Don Anthony* (supra) were decided does not mean that that was not the law when those cases were decided. It would be incorrect to say that *Piyadasa* (supra) altered the law, as was submitted by Mr. Wanasundere. Therefore, *Derrick v. Williams*<sup>1</sup> on which he placed reliance has no application to the matter now before this Court. That case was decided on the basis that the law was subsequently altered.

*Piyadasa* (supra) was followed in *Ranasinghe* (supra), which was affirmed by the Privy Council when it dismissed the appeal of the Bribery Commissioner.

Mr. Wanasundere's next submission that the petitioner now seeks to quash the order made by this Court in appeal is not correct. What he seeks to do is to have the proceedings had before the Bribery Tribunal from the commencement up to and including the conviction quashed.

This Bribery Tribunal had no jurisdiction to hear and determine the case against the petitioner. Therefore, the application is allowed and the proceedings, including the conviction, are quashed. The petitioner is entitled to costs.

ALLES, J.—I agree.

*Application allowed.*

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